

# Congress of the United States

# **NEWS RELEASE**

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*Attn: National Desk, Congressional Affairs, Environment,*  
*Water Resources, Corps of Engineers*

## **Legislation Introduced to Restore Federal Protection of Rivers, Streams, Wetlands** ***Oberstar, Dingell move to reverse SWANCC ruling***

WASHINGTON—The top Democrats on the Committee on Transportation and Infrastructure and the House Energy and Commerce Committee today introduced legislation to restore and more clearly define federal authority over the nation's rivers, streams, and wetlands under the Clean Water Act.

Rep. James L. Oberstar (Minn.) and Rep. John Dingell (Mich.) were joined by more than 100 cosponsors of both parties in the House.

In effect, the bill overturns the 2001 Supreme Court decision in the case of *The Solid Waste Agency of Cook County v. Army Corps of Engineers* (the SWANCC case), which limited the Corps's authority over certain wetland areas.

"This bill will amend the Clean Water Act to reestablish the original intent of Congress in that 1972 law to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," said Oberstar. "The SWANCC case was decided 5-4 contrary to the intent of Congress and against the grain of nearly 30 years of judicial and administrative precedent."

"The Supreme Court got it wrong, and now the Bush administration is using this narrow ruling to attempt to rollback over 30 years of Clean Water Act progress," said Dingell. "The legislative history of the Clean Water Act clearly and unambiguously states that the statute applies to all the waters of the United States. I know this because I personally included it in the Congressional Record in 1972. The bill we are introducing today reaffirms the original intent of the Act."

Before the SWANCC decision, section 404 of the Clean Water Act served as the primary federal protection for wetlands that serve important habitat, flood control and water quality improvement functions. Without that protection, small, isolated waters, including wetlands, are being filled or drained without regard to the impact on the environment or human needs.

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In *SWANCC* the Court ruled that when Congress used the term "navigable waters" in the Clean Water Act, it intended that there be some connection to actual navigation and commerce. However, Congress was very deliberate and careful to define "navigable waters" in the Clean Water Act as "the waters of the United States, including the territorial seas." The legislative history and court decisions prior to *SWANCC* have also given the term "navigable waters" the broadest possible interpretation.

The Oberstar-Dingell bill would eliminate the term "navigable waters" throughout the Clean Water Act and replace it with the term "waters of the United States." These would be defined as coastal waters, territorial seas, all interstate and intrastate bodies of water (including tributaries) to the full extent that they are subject to the power of Congress under the Constitution. It would specifically include a river, stream, lake, natural pond, mudflat, sandflat, wetland, slough, prairie pothole, wet meadow, playa lake, natural pond, and an impoundment to any of these waters. The definition is a combination of long-standing interpretations of jurisdiction by the Environmental Protection Agency and the Corps of Engineers prior to the January 2001 *SWANCC* decision.

The bill restores, but does not expand, federal protections under the Clean Water Act.

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